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State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

M 0530059
cc: cym

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February 10, 2008

CERTIFIED RETURN RECIEPT REQUESTED

7005 2570 0000 4801 7000

Jeff Sagers
Southwest Stone
2421 West 350 North
Hurricane, Utah 84737

Subject: Findings of Fact, Conclusions, Order and Finalized Assessment for Cessation Order
#MC-2008 01-01, Southwest Stone, Limestone Mesa/Desert Bronze Quarry,
M/053/0059, Washington County, Utah

Dear Mr. Sagers:

On December 4, 2008, an Informal Conference was held to review the fact of violation and proposed assessment for cessation order # MC-2008-01-01. As a result of a review of all pertinent data and facts, the following the findings of fact, conclusions, order, are entered.

FINDINGS OF FACT:

1. On April 10, 2008, the Limestone Mesa/Desert Bronze Mine Site was inspected. During the inspection, it was noted that mining related activity was occurring outside the permitted and bonded area. The Inspector issued Cessation Order #MC-2008-01-01.
2. On October 30, 2008, the site was again inspected at the request of the operator, to look at areas that had been reclaimed so that a partial bond release could be approved and the amount used toward additional expansion of the site. During this inspection, additional disturbed area outside the permitted area was observed. Cessation Order MC-200-001-01 is modified to include this area and extend the abatement deadline until January 5, 2009.
3. On August 1, 2008, the Operator made the final payment of \$2,000, to increase the surety amount currently held by \$6,000, for reclamation of the 6 acres subject of the original cessation order.
4. On May 22, 2008, the Division received an amended NOI (deficient) to add the 6 acres to the permit area.
5. The Division Staff properly prepared the proposed assessment of \$4,950.



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6. The operator's request to appeal the fact of the violation and the proposed assessment was not timely. However, the operator claimed he had not received the assessment and was not aware of the deadline for filing the appeal. The Division gave the operator the benefit of doubt and allowed the informal conference to be held
7. The operation has subsequently expanded, the operator is in the process of revising maps for the NOI.

CONCLUSIONS:

1. Cessation Order #MC-2008-01-01 is **upheld**.
2. The assessment is modified (see attached worksheet). Assigned damage points were reduced from 19 to 15 points. 5 points of Good faith was awarded. The finalized assessment for this violation is now \$4,180.

ORDER:

1. Southwest Stone is hereby ordered to diligently work with Division Staff to complete the revised NOI for the site.
2. The assessed penalty of \$4,180 is held in abeyance pending review of the revised NOI and revision of the reclamation surety amount for this project. So long as operator is responsive to Division staff, in providing necessary responses to finalize the revision and modifies the reclamation surety as determined by the amendment, this fine may be waived.
3. Upon completion of the permitting for the revised NOI, the operator will be informed of the final outcome of the revised penalty (whether it is waived, or re-instated). At that time the operator will be informed of his appeal rights and procedures for requesting an appeal, if desired.

Sincerely,



Dana Dean, P.E.
Associate Director, Mining

DD:lk:vs

Enclosure: Final Assessment

cc: Lynn Kunzler, DOGM

Vicky Bailey, DOGM

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<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS: Inspector indicated the disturbance has already occurred.

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 15

PROVIDE AN EXPLANATION OF POINTS: Operator cited less than 3 years ago for operating outside permitted area, and was warned 1-1/2 years ago of need to permit before expanding disturbed areas. 6 acres is nearly 50 percent of permitted area – assigned points to mid point of upper half of range.

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement?
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS n/a

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 35

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation, which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Greater Degree of Fault

ASSIGN NEGLIGENCE POINTS 23

PROVIDE AN EXPLANATION OF POINTS: Assigned points in mid range – considering the operator had received a previous violation of the same nature and had been given warnings regarding expanding without the necessary approvals.

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?
IF SO--EASY ABATEMENT

Easy Abatement Situation

X	Immediate Compliance	-11 to -20*
	(Immediately following the issuance of the NOV)	
X	Rapid Compliance	-1 to -10
	(Permittee used diligence to abate the violation)	

X	Normal Compliance	0
	(Operator complied within the abatement period required)	
	(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)	

*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- | | | |
|---|---|-------------|
| X | Rapid Compliance | -11 to -20* |
| | (Permittee used diligence to abate the violation) | |
| X | Normal Compliance | -1 to -10* |
| | (Operator complied within the abatement period required) | |
| X | Extended Compliance | 0 |
| | (Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete) | |
| | (Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan) | |

EASY OR DIFFICULT ABATEMENT? _____

ASSIGN GOOD FAITH POINTS - 5

PROVIDE AN EXPLANATION OF POINTS: The required NOI amendment and additional bonding were provided under normal compliance – points awarded at midpoint in range.

V. ASSESSMENT SUMMARY (R647-7-103.3)

NOTICE OF VIOLATION # <u>MC-2008-01-01</u>	
I. TOTAL HISTORY POINTS	<u>5</u>
II. TOTAL SERIOUSNESS POINTS	<u>35</u>
III. TOTAL NEGLIGENCE POINTS	<u>23</u>
IV. TOTAL GOOD FAITH POINTS	<u>-5</u>
TOTAL ASSESSED POINTS	<u>58</u>
TOTAL ASSESSED FINE	<u>\$ 4,180</u>

Assessed fine held in abeyance pending review of revised NOI. Operator to be informed of final outcome of penalty upon completion of permitting of the revised NOI.